

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

GARY CASTRO,

No. 14-0272 MMC

Plaintiffs,

v.

CITY OF UNION CITY, et al.,

**ORDER DISMISSING WITHOUT  
PREJUDICE ALL CLAIMS AGAINST  
DEFENDANTS SAU NGUYEN,  
MASSINGHAM & ASSOCIATES, AND  
CATHY MOUNT**

Defendants.

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Before the Court is plaintiff's response, filed July 9, 2014, to the Court's order, filed June 25, 2014, directing plaintiff to show cause why his claims against defendants Sau Nguyen ("Nguyen"), Massingham & Associates ("Massingham"), and Cathy Mount ("Mount") should not be dismissed for failure to serve said defendants within 120 days after January 16, 2014, the date on which he filed his complaint. See Fed. R. Civ. P. 4(m).

In his response, plaintiff acknowledges he has not served Nguyen, Massingham, or Mount, and, in essence, argues he should be afforded additional time to do so. Consequently, the Court considers whether plaintiff has shown good cause for an extension of time or that he should be afforded an extension due to excusable neglect. See Crowley v. Bannister, 734 F.3d 967, 976 (9th Cir. 2013) (holding claims against defendants not served within time set forth in Rule 4(m) are subject to dismissal in absence

1 of showing by plaintiff of "good cause or excusable neglect").

2 Plaintiff asserts he has not served Nguyen because, according to plaintiff, the  
 3 "Superior Court in Fremont, Ca., will not give the plaintiff access to [where] defendant Sau  
 4 Nguyen resides." (See Pl.'s Response at ¶ 7.) Plaintiff fails to show that the Superior  
 5 Court has any duty, and the Court finds it does not, to provide plaintiff with assistance in  
 6 locating where Nguyen may reside. Further, plaintiff fails to identify any other step he has  
 7 taken to determine Nguyen's location.

8 With respect to Massingham, which is or was plaintiff's employer, and Mount, who is  
 9 or was plaintiff's supervisor, plaintiff fails to identify any impediment existed to his serving  
 10 those defendants within the applicable 120-day period or that any such impediment  
 11 presently exists. Rather, plaintiff asserts, he does not wish to serve them until after a  
 12 criminal case presently pending against plaintiff in state court has been resolved.<sup>1</sup> Plaintiff  
 13 fails to show why Massingham and Mount should not be made aware of plaintiff's claims  
 14 until after the criminal case concludes, and, indeed, such delay may well prejudice said  
 15 defendants who have no notice of the need to preserve evidence that may be relevant to  
 16 possible defenses to plaintiff's civil claims. In any event, plaintiff's unilateral decision to  
 17 delay service for strategic reasons does not constitute good cause for his failure to serve or  
 18 establish excusable neglect. See In re Kirkland, 86 F.3d 172, 174, 176 (10th Cir. 1996)  
 19 (affirming dismissal of complaint for failure to timely serve defendant, where plaintiffs  
 20 asserted they "waited to serve" defendant for "strategic reasons," based on pendency of  
 21 other "ongoing legal proceedings"). Further, plaintiff will suffer no prejudice by reason of a  
 22 dismissal, as the events giving rise to his claims occurred in February 2013 and the  
 23 applicable statute of limitations is two years.

24 Accordingly, plaintiff having failed to show good cause or excusable neglect,  
 25 plaintiff's claims against Nguyen, Massingham, and Mount are hereby DISMISSED, without

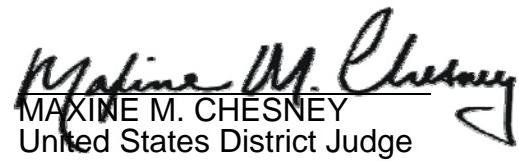
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27                   <sup>1</sup>In the criminal case, according to plaintiff, he is accused of assaulting Nguyen. In  
 28 the instant civil action, plaintiff alleges that Nguyen assaulted him while he was at work and  
 that Massingham "provided inadequate security" at the workplace (See Compl. ¶ 17.)

1 prejudice to plaintiff's refiling his claims against said defendants in a separate action or  
2 actions.

3 **IT IS SO ORDERED.**

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5 Dated: July 11, 2014  
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MAXINE M. CHESNEY  
United States District Judge